

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. 23-CR-20121

ASHLEY GRAYSON AND
JOSHUA GRAYSON,

Defendants.

TRANSCRIPT OF THE SCHEDULING/STATUS CONFERENCE
BEFORE THE
HONORABLE JON P. MCCALLA

THURSDAY
OCTOBER 26, 2023

TINA DuBOSE GIBSON, RPR, RCR
OFFICIAL REPORTER
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MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

A P P E A R A N C E S

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1 THURSDAY

2 OCTOBER 26, 2023

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5 THE COURT: Let's go over a couple of things, and
6 because I didn't do the first conference, I'm going to need
7 some updating in terms of what our situation is. I see that
8 the requirement was that the disclosers, the discovery be
9 made on August the 9th. Was it made then?

10 MR. OLDHAM: Yes, Your Honor.

11 THE COURT: Okay. Well, what happened to the
12 letter, then? Was it additional material in connection with
13 the letter that you included?

14 MR. OLDHAM: Your Honor, I believe that the
15 letter was -- that it was an oversight where it was filed
16 later, Your Honor. We have one from -- we had --

17 THE COURT: You had already produced everything?

18 MR. OLDHAM: Yes, Your Honor.

19 THE COURT: And you produced it in August?

20 MR. OLDHAM: Yes, Your Honor.

21 THE COURT: That's good. I am going to ask a
22 little bit because I don't know about what happened here.

23 MR. OLDHAM: Yes, Your Honor.

24 THE COURT: Whose cell phone was used according
25 to the government?

1 MR. OLDHAM: There are -- the one that the
2 government is relying on, Your Honor, is somebody named
3 Olivia Johnson, who is a witness here in Memphis, Tennessee.
4 And the other would be an electronic device used by the
5 defendant Ashley Grayson.

6 THE COURT: Okay. What would the second device
7 be?

8 MR. OLDHAM: Your Honor, I don't know if we have
9 that information. It would have to be a device with some
10 sort of platform that would be able to do a video call.

11 THE COURT: It could be an iPad.

12 MR. OLDHAM: It could, Your Honor. They could do
13 a video conference between herself and Ms. Johnson, who is
14 here.

15 THE COURT: Do we have any copies of the video
16 conferences?

17 MR. OLDHAM: We do, Your Honor, and that has been
18 disclosed.

19 THE COURT: Okay. What do they show?

20 MR. OLDHAM: Your Honor, it purports to show a
21 conversation between Ms. Johnson and Ms. Grayson where they
22 are discussing a previous conversation they had in person
23 approximately a week to ten days before regarding
24 Ms. Grayson's desire to have three people killed by
25 Ms. Johnson and her significant other.

1 During the course of the conversation, they
2 decide that two of them -- or Ms. Grayson decides that two of
3 them, it's not the right time for those two; however, the
4 third, she is ready for her to -- I think the language used
5 is -- be gone.

6 THE COURT: To be gone, to kill this person?

7 MR. OLDHAM: Yes, Your Honor. And --

8 THE COURT: What were they killing these people
9 for?

10 MR. OLDHAM: Your Honor, it is -- it's a
11 complicated series of events that mostly took place online
12 and in social media --

13 THE COURT: Sure.

14 MR. OLDHAM: -- and this person was a rival in
15 her business who may have already also posted personal
16 information about Ms. Grayson including but not limited to
17 her actual address and other information that would harm --
18 potential to harm Ms. Grayson in person and especially her
19 business that she had built. She was a very successful -- or
20 is a very successful business person and influencer on social
21 media.

22 And the attacks that she got from all three
23 potential victims, but the one named in the indictment could
24 harm her personal reputation and her business reputation, and
25 that is what the government thinks she was reacting to.

1 THE COURT: Okay. How much was to be paid for
2 the murder?

3 MR. OLDHAM: Your Honor, it was supposed to be
4 \$20,000. Our witnesses, however, said that they tried to
5 carry out the homicide and told Ms. Grayson they deserved at
6 least half of the money. They sent her pictures or a video
7 of police lights and intimated that that's where they had
8 tried to take out the person who they had decided needed to
9 be killed now.

10 In the same night, they drove to Dallas. Met
11 Ms. Grayson and her husband in the bottom floor apartment
12 that is in his name. And we have -- we do have the
13 surveillance video where they meet. They're there for a few
14 moments, Your Honor. And Mr. Grayson is seen to push
15 something over to the witnesses in the case, and they will
16 testify that it was \$10,000.

17 THE COURT: 10,000.

18 MR. OLDHAM: So it would be half of what the
19 amount promised was.

20 THE COURT: Was the money recovered?

21 MR. OLDHAM: It was not, Your Honor. When --
22 this all happened before police ever got involved.

23 THE COURT: Okay.

24 MR. OLDHAM: The case actually came to light when
25 they reached out to a local attorney, who then reached out to

1 me and my office to say we have this issue, what should we
2 do? And then they came in and started --

3 THE COURT: I'm sorry. Who reached out to you?

4 MR. OLDHAM: A local attorney.

5 THE COURT: A local attorney. And a key witness?

6 MR. OLDHAM: He could be, Your Honor. If they
7 were impeached, I think.

8 THE COURT: Sure.

9 MR. OLDHAM: He could be. But I think at this
10 point he is not.

11 THE COURT: A local Dallas attorney?

12 MR. OLDHAM: No. A local Memphis attorney.

13 THE COURT: Memphis attorney?

14 MR. OLDHAM: Yes, Your Honor.

15 THE COURT: Oh, okay. Who went to the local
16 Memphis attorney with this concern?

17 MR. OLDHAM: The Johnsons, Your Honor, the people
18 who had been hired. After they got the money, I think the
19 communication with Ms. Grayson broke down pretty rapidly, and
20 they then went to their attorney.

21 THE COURT: Okay. Were they trying to collect
22 more money, or were they concerned that they were about to be
23 indicted?

24 MR. OLDHAM: Your Honor, I think it's probably a
25 combination of both. And I believe that Ms. Grayson -- and I

1 think the record bears out -- was going to say that they were
2 maybe extorting her. And she went to the FBI herself right
3 around the same time that that attorney brought those two
4 people in to speak with me. And, initially, the ATF was
5 involved, and then the FBI got involved.

6 THE COURT: Sure. Okay. Well, this is
7 interesting.

8 MR. OLDHAM: It is an interesting case, Your
9 Honor.

10 THE COURT: In the 235 pages disclosed, is this
11 in there? I mean, I don't know what's in the disclosures and
12 whether there's a separate disclosure, a video.

13 MR. OLDHAM: There is, Your Honor. If -- there
14 is a video. There was a Facebook search warrant done, Your
15 Honor, on Ms. Grayson's phone; and there was a search warrant
16 performed on the witnesses' phone, Your Honor, just to
17 preserve whatever was on there.

18 THE COURT: Sure.

19 MR. OLDHAM: What we did have is the video that I
20 described at the very beginning, Your Honor, and then the
21 surveillance video from the apartment complex that I also
22 described. Those are the two main digital things that we are
23 relying on.

24 THE COURT: Sure.

25 MR. OLDHAM: The rest was to preserve and to show

1 that there was communication between our witness and
2 Ms. Grayson and the activity of both that was so -- there was
3 so much of it on social media to show all the people
4 interacting.

5 THE COURT: Do we have text messages?

6 MR. OLDHAM: Not that we're especially relying
7 on, Your Honor, that would be significant.

8 THE COURT: Okay.

9 MR. OLDHAM: It is mostly the -- if I could back
10 up, Your Honor. The very first part is the witnesses from
11 here flying to Dallas to have in-person conversations. We do
12 have the record of their flight, I think on September 5, Your
13 Honor, to Dallas. And we also have a -- some sort of mobile
14 platform, I think Cash App, but I'm not positive, a transfer
15 of money to Ms. Grayson to -- from Ms. Grayson to Ms. Johnson
16 to purchase that plane ticket for that first conversation.

17 THE COURT: Okay. Can you track the \$10,000?

18 MR. OLDHAM: We cannot, Your Honor. It was in
19 cash. Once it came back -- first, there was a transfer of
20 less than that on the Cash App, Your Honor, for the plane
21 ticket. And then when the \$10,000 came back, it was -- by
22 the time I met with the people, they said that it was in
23 large part already gone.

24 THE COURT: Sure. What evidence do they have
25 other than the video on the 10,000?

1 MR. OLDHAM: It would just have to be the
2 reliability of our witnesses, Your Honor.

3 THE COURT: Sure. And how many Johnsons went --
4 or individuals went to Texas?

5 MR. OLDHAM: Two Johnsons and a driver, Your
6 Honor.

7 THE COURT: Okay. Okay.

8 MR. OLDHAM: And they drove there. They were in
9 the lobby for a matter of minutes and turned right back
10 around and came right back, Your Honor, all in the same trip.

11 THE COURT: What kind of vehicle?

12 MR. OLDHAM: I think it was a Toyota Camry or
13 another sedan that looks like that, but I think it's a Camry,
14 Your Honor.

15 THE COURT: Was it rented or owned?

16 MR. OLDHAM: I believe it was owned by the driver
17 or one of his people or relatives.

18 THE COURT: And is the driver a witness in the
19 case?

20 MR. OLDHAM: He is somebody that the FBI has
21 spoken to, Your Honor --

22 THE COURT: Okay.

23 MR. OLDHAM: -- I believe.

24 THE COURT: So we've got the two Johnsons, the
25 driver, and then you have all this electronic material or

1 some electronic material?

2 MR. OLDHAM: Some electronic material, Your
3 Honor. Also, the other two people who were first subject to
4 the conversation. And I think it's significant because they
5 discussed them again during that video call and their
6 decisions not to have them do that at that time. So I think
7 that the conflicts that Ms. Grayson had with both of them
8 would be relevant and significant to show that she has
9 conflict with three people.

10 She has spoken, like the witnesses say, to the
11 witnesses about all three and they're deciding right now is
12 the best time for one of them. And then she gives reasons
13 why right now is not okay for the other two. So I think that
14 was significant. And there is communication between them.

15 Your Honor, there has also been, because this is
16 social media, a lot of posts made since then. The FBI is now
17 getting those together for a second round. But it's been
18 happening so often, we were trying to accumulate so that we
19 can turn it over to the attorneys. Both posts by Ms. Grayson
20 and posts by the other --

21 THE COURT: -- the other social media person.

22 MR. OLDHAM: Ms. Grayson is posting on social
23 media about this somewhat, saying: You don't know the whole
24 story, things are going to happen and things like that. And
25 then the other -- the two people who are not the victim in

1 the indictment have been posting a lot about the case and
2 people responding. And then the third person, who is the
3 victim, has been talked about a lot. So there's a lot going
4 on in the case, Your Honor.

5 THE COURT: It's still going on?

6 MR. OLDHAM: Yes, Your Honor.

7 THE COURT: Now, the question is: Is any of that
8 relevant to the charge in the case? Some of it might be
9 relevant on an admission side. I don't know.

10 MR. OLDHAM: I believe that there are some
11 admissions made by Ms. Grayson of: You don't know what they
12 did to me, kind of almost intimating to get me to this point
13 or to what happened. You don't understand what happened
14 before.

15 THE COURT: Sure. Is her social media business
16 still thriving?

17 MR. OLDHAM: I do not know, Your Honor. But I
18 know that Mr. Grayson and Ms. Grayson are very successful,
19 and I would not be surprised. I think Ms. Grayson actually
20 coaches other people on how to build a business online. And
21 like I said, I know that they're both very successful, but
22 I'm not aware of the status of --

23 THE COURT: And how much of the -- there are
24 online videos that you have, right?

25 MR. OLDHAM: Yes, Your Honor.

1 THE COURT: Okay. Ms. Grayson, what does she do
2 online? What is she promoting?

3 MR. OLDHAM: She promotes credit repair.

4 THE COURT: Oh, my goodness.

5 MR. OLDHAM: I think if you give her your
6 personal information, then she can access those reports. She
7 then goes in and does what she does to help people with
8 credit repair. And I think she also, like I said, Your
9 Honor, from that, because she has grown her business, now she
10 teaches other people how to do either that or other things.
11 I'm not sure what her teaching does. But I know that she
12 does do personal coaching and I think seminars.

13 THE COURT: Okay.

14 MR. OLDHAM: And that's how she met Ms. Johnson,
15 Your Honor, the very beginning several years before this
16 started. She reached out to Ms. Johnson because Ms. Johnson
17 is a local person in Memphis, who has a large following on
18 social media. So Ms. Johnson was able to then advertise
19 Ms. Grayson's business, and I think that helped her gain more
20 traction in this market to have her business grow.

21 THE COURT: Okay. That's all helpful. Do you
22 anticipate any experts in the case? If you do, we need to
23 get them disclosed right away.

24 MR. OLDHAM: Yes, Your Honor. I do not. I
25 believe that most of these records are standard records that

1 come in in the normal course of a trial and through the
2 normal course of evidence.

3 THE COURT: Okay. That's helpful. Have you been
4 told by the defense if they anticipate any experts?

5 MR. OLDHAM: I have not, Your Honor.

6 THE COURT: They have a duty to tell you if they
7 do because you've made your 26 -- you've made your Rule 16
8 disclosures?

9 MR. OLDHAM: Yes, Your Honor.

10 THE COURT: Well, let's go back and ask them.

11 Okay. Mr. Ballin, any experts in this case?

12 MR. BALLIN: Your Honor, our involvement is
13 relatively recent; whatever the date is, it is. We are aware
14 of our obligation under the rules to disclose. There are
15 none to disclose today, as of today.

16 THE COURT: Okay. So do you have any experts?

17 MR. BALLIN: As of today, no, sir, but we realize
18 our continuing duty to disclose if we do have any.

19 THE COURT: You could have already missed your
20 time period to disclose already under the local rules, but we
21 will make sure that we set a very clear date on that.
22 Sometimes that happens. It's not good, but sometimes that
23 happens.

24 All right. And your co-counsel -- you're lead,
25 aren't you?

1 MR. SCHOLL: Yes, Your Honor.

2 THE COURT: No, I'm sorry. I'm talking to
3 Mr. Ballin. You're the only one?

4 MR. SCHOLL: I'm sorry. I thought you were
5 talking to me. I can't see that far, Judge.

6 MR. BALLIN: Your Honor, I'm carrying the
7 briefcase in this matter. I'm second chair. Mr. Scott
8 Palmer actually is in trial in district court in Plano,
9 Texas.

10 THE COURT: In district court? Do you know what
11 case he's in?

12 MR. BALLIN: He told me it was a drug case.

13 THE COURT: Okay. We'll check on that.

14 MR. BALLIN: Yes, sir.

15 THE COURT: He's in district court in Plano?

16 MR. BALLIN: That's what he told me.

17 THE COURT: Well, we'll certainly find out. How
18 long is he going to be in trial?

19 MR. BALLIN: He was hopeful to be finished this
20 week.

21 THE COURT: Okay. We're checking right now to
22 make sure he's in trial. Sometimes people think they're
23 going to be in trial, and they're not. That does happen
24 occasionally, as you know.

25 Okay. So they need to let you do more than carry

1 the briefcase if they want to do well in this case, but
2 that's their choice, right?

3 MR. BALLIN: If I'm called to do something, I
4 will step forward and do what I do.

5 THE COURT: Okay. Well, I'm just saying that
6 certainly, you're extremely competent local counsel, and
7 everybody needs to understand that. And, of course, you have
8 obligations that are important in the case in terms of acting
9 as local counsel. So we're looking forward to having you.

10 MR. BALLIN: Yes, sir.

11 THE COURT: Okay. Well, we're going to set a
12 final schedule today.

13 Okay. Mr. Scholl, you can tell me all about your
14 trip if you want to.

15 MR. SCHOLL: I'll wait until we're not in court,
16 Judge.

17 THE COURT: Sure, that's fine.

18 What's our situation again on experts? There may
19 not need to be any.

20 MR. SCHOLL: On mine, Your Honor, we don't have
21 any experts to disclose as of today. My assessment of things
22 at this point, I'm a little bit ahead of everyone else. I
23 don't anticipate experts on behalf of Mr. Grayson.

24 THE COURT: Right. And the reason I was asking
25 some detailed information was to understand how much their

1 forensics have been involved. Doesn't sound like that much
2 actually.

3 MR. OLDHAM: No, Your Honor. In the normal
4 course of downloading, which is what agents can do on their
5 own, we haven't had any sort of expert extractions or
6 anything like that.

7 THE COURT: Okay.

8 MR. SCHOLL: The only thing I can anticipate,
9 Judge, is that the video that is initially the subject of all
10 this, that was the conversation between Ms. Grayson and
11 Ms. Johnson is not a complete video. It's our position that
12 the video has been spliced and diced and does not represent
13 the full conversation. So whether I will need an expert with
14 regards to that aspect of it, I'm not quite sure yet.

15 THE COURT: Is this the Texas video when the
16 money or whatever it is was being exchanged?

17 MR. SCHOLL: The alleged discussion that there
18 was going to be a contract for -- to have someone eliminated.

19 THE COURT: Sure. But this is the Texas video,
20 the in-person conference? Or maybe it's not.

21 MR. OLDHAM: This would be the one that was on --
22 when you asked what devices were used, this was the one after
23 the Texas --

24 MR. SCHOLL: Right.

25 THE COURT: It's the one after the Texas meeting?

1 MR. OLDHAM: -- and before the money was
2 allegedly changed hands. There's that conversation that
3 happens on the devices.

4 THE COURT: Sure. And we don't know if it's an
5 iPad or not.

6 MR. OLDHAM: Right, Your Honor.

7 MR. SCHOLL: The Texas video is a surveillance
8 video at a condominium complex. The other video is a video
9 that I'm not quite sure if Ms. Johnson made the video or
10 whatever; but throughout the discovery, it's listed
11 everywhere that the FBI does not have a complete video. They
12 haven't been able to obtain a complete video. They have only
13 been able to obtain a portion, which is the portion that we
14 have here. So our -- well, I'll leave it at that.

15 THE COURT: What's the date of that video?

16 MR. OLDHAM: September -- sorry, Your Honor.
17 It's either September 10th or 11th. I think the video is
18 September 10th, and the trip to Texas bled over into the
19 morning of September 11th.

20 THE COURT: So September 11, September 10, there
21 is a video. Who made the video?

22 MR. OLDHAM: The witness, Ms. Johnson, Your
23 Honor. And it is a video of her having a video conference
24 call with the defendant, Ms. Grayson. And you can see
25 Ms. Grayson on the screen.

1 THE COURT: To what degree can the company,
2 whoever it was that was supplying the service, provide more
3 information in that regard?

4 MR. OLDHAM: I don't think that there is more
5 information. We have that video, and we have done a download
6 of her device. But I don't know if it's the primary device
7 or the device that took the video. What we do have is the
8 complete version of what we have, and I don't think we have a
9 way to recover or get more.

10 THE COURT: And have you turned over all the
11 metadata in connection with the video?

12 MR. OLDHAM: Yes, Your Honor. Anything that we
13 have downloaded, we have given completely to counsel.

14 THE COURT: Can anybody examine the video and
15 tell the degree to which it might have been altered?

16 MR. OLDHAM: We will -- I will try to do that,
17 Your Honor.

18 THE COURT: I mean, we need to know.

19 MR. OLDHAM: Absolutely. Absolutely.

20 THE COURT: Sure.

21 MR. OLDHAM: I don't know if it's -- I think it
22 is a -- the government would submit this is the complete part
23 of the conversation that we have, but it wasn't diced up.
24 But maybe the front and the back are taken out. But we will
25 do that, Your Honor, if there is any resource to do that.

1 THE COURT: The Johnsons, have they turned over
2 the piece of equipment?

3 MR. OLDHAM: Yes, Your Honor. They did turn over
4 her cell phone on which the conversation took place. And we
5 did do a search warrant on that cell phone.

6 THE COURT: Okay.

7 MR. OLDHAM: And we'll look for -- if there is
8 more data, we will try to find that, Your Honor.

9 THE COURT: Well, the reason I asked about
10 experts is that, apparently, there's going to be some
11 assertion that the video has been materially altered. And
12 somebody is going to have to tell us about that. I mean,
13 it's not going to be a lawyer. I mean, a lawyer can tell us,
14 but it's irrelevant.

15 MR. OLDHAM: Yes, Your Honor.

16 THE COURT: But somebody is going to have to tell
17 us about that. Have you submitted it to the FBI for
18 analysis?

19 MR. OLDHAM: They have it, Your Honor. I don't
20 believe we've submitted it for analysis.

21 THE COURT: I'm not telling you what to do, but
22 we may as well anticipate everything that's going to occur or
23 might occur.

24 MR. OLDHAM: Yes, Your Honor.

25 THE COURT: And then we have to move forward.

1 Okay. Now, I think I need to go over with the
2 Graysons our situation. You're not in state court. We are
3 going to move pretty quickly. Well, actually, move quite
4 quickly. And so it's going to move along. Now, that's a
5 good thing typically, but I can't tell how that works out for
6 anybody. But that's usually better than slow, which is like
7 really expensive. And it's inconsistent with the Speedy
8 Trial Act and the Constitution, so we don't want to go slow.

9 You're both charged in Count 1, as you know, and
10 it provides that from about August the 26th of 2022 and
11 continuing until on or about September 11, which is certainly
12 an easy day to remember, of 2022, in the Western District of
13 Tennessee and elsewhere, the defendants Ashley Grayson and
14 Joshua Grayson, together with others unknown or known and
15 unknown to the grand jury, did knowingly and intentionally
16 conspire to use and cause another to use a facility in
17 interstate commerce to wit, a cell phone, with the intention
18 that the murder of DH -- I'm not real sure if I ever got the
19 real name -- that DH, a real person, known to the grand jury
20 be committed in violation of the laws of the State of
21 Mississippi and as consideration for the receipt of and
22 promise and agreement to pay money and other items of
23 pecuniary value all in violation of Title 18 United States
24 Code Section 1958.

25 Now, I'm sure that both of you know the charges

1 well and have reviewed them with counsel, but I usually
2 confirm that just to be sure because this is the first time
3 I've seen you. So, Ms. Grayson, you've gone over the charges
4 carefully, I'm sure; is that right?

5 DEFENDANT MS. GRAYSON: Yes, Your Honor.

6 THE COURT: And, Mr. Grayson, you've gone over
7 them carefully with Mr. Scholl?

8 DEFENDANT MR. GRAYSON: Yes, Your Honor.

9 THE COURT: Okay. Now, these do have the penalty
10 of not more than ten years in prison, a \$250,000 fine, or
11 both and not more than three years of supervised release, a
12 special assessment of a hundred dollars. So you do
13 understand the penalties associated with the statute under
14 which you're charged; is that right, Ms. Grayson?

15 DEFENDANT MS. GRAYSON: Yes, Your Honor.

16 THE COURT: Okay. And Mr. Grayson?

17 DEFENDANT MR. GRAYSON: Yes, Your Honor.

18 THE COURT: Okay. Now, obviously, I don't know
19 what happened here. That's the reason I asked all of those
20 questions at the beginning. Significant discovery has been
21 made by the government, and I'm under the current impression
22 that the government doesn't anticipate any additional
23 disclosures. I did ask the questions about forensic
24 examination, and it may be that you decide it's not
25 necessary.

1 Does the material that you've disclosed seem
2 continuous?

3 MR. OLDHAM: Yes, Your Honor.

4 THE COURT: Okay. All right. Now, what we do is
5 we have to set real dates, and they've been moving around a
6 little bit. That's not good. We don't do that over here if
7 we can avoid it. So what we're going to do is set a date for
8 final motions. Now, there was a motion which said that they
9 would want to put a deadline after the motions were filed.
10 Well, that's not going to work.

11 Usually the motions are filed within 14 to 21
12 days of today. Actually, they would have been filed 14 to 21
13 days from August the 9th, but that didn't happen.

14 Is there a reason that we shouldn't -- are there
15 any statements by either defendant?

16 MR. OLDHAM: Not that were made to law
17 enforcement, Your Honor.

18 THE COURT: Okay. So there's no question about a
19 motion to suppress in that regard?

20 MR. OLDHAM: I'm not defense counsel but not from
21 my perspective.

22 THE COURT: Not typically.

23 MR. OLDHAM: Not something that I would
24 anticipate.

25 THE COURT: And search warrant?

1 MR. OLDHAM: There is a search warrant of
2 Ms. Grayson's cell phone that I think there could be a motion
3 to suppress on that, Your Honor.

4 THE COURT: It's a possibility?

5 MR. OLDHAM: Yes, Your Honor.

6 THE COURT: Okay. So everybody knows what the
7 potential motions are, not many but might be one. Doesn't
8 have to be. That's usually 14 days from now, and it could be
9 21 days from now. That's why I was checking on it. I take
10 it that we found out that Mr. Palmer is actually in trial.
11 So that's good. If he's not, we need to know when he's going
12 to start.

13 We can't tell yet?

14 CASE MANAGER: I'm still checking. I've got
15 somebody working on it.

16 THE COURT: We'll find out. Well, we're going to
17 assume that he is in trial, and he's going to finish as
18 opposed to saying he's about ready to start trial, and it's
19 going to be another week or so.

20 Mr. Ballin, you know how to prepare a motion to
21 suppress, anyway, right?

22 MR. BALLIN: I do. Your Honor, my recollection
23 is that we have asked for and been granted until November 15
24 to file motions.

25 THE COURT: You have been. You were. That's

1 your deadline now.

2 MR. BALLIN: Okay.

3 THE COURT: And there was some reference that we
4 wanted to -- yes, that's correct.

5 There was some suggestion that there was some
6 fluidity about that date, and I was trying to remove that.
7 So we're not moving the date because everybody has got the
8 package. They know what is out there in terms of potential
9 motions. And they need to either file them or not file them,
10 one of the two.

11 Yes, sir?

12 MR. SCHOLL: I think Mr. Oldham said that they
13 were in the process of getting some additional social media
14 information and maybe a second round of discovery.

15 THE COURT: He did say that, but it doesn't seem
16 to be relevant to the charges in the case. It seems to be
17 only relevant to the point that it might constitute
18 cross-examination. Is that about right?

19 MR. OLDHAM: Yes, Your Honor. There might be an
20 admission that we might seek to put in in our case in chief.

21 THE COURT: Right.

22 MR. OLDHAM: But those are --

23 THE COURT: If you type on social media: I did
24 it, but there's a really good reason. That would probably be
25 important.

1 MR. OLDHAM: Yes, Your Honor. And those things
2 are public posts. And, obviously, they need to review it to
3 decide if they need any sort of motion. But we do plan on
4 getting that together and getting that submitted. But we do
5 not anticipate a motion that would come out of that.

6 THE COURT: Yeah. Well, when is that going to be
7 submitted?

8 MR. OLDHAM: Your Honor, we do have an e-mail and
9 a call -- well, an e-mail into our FBI agent. Have not
10 responded yet. Could we have one week from today to do that?

11 THE COURT: Sure.

12 MR. OLDHAM: I don't want to overpromise a
13 timeline, Your Honor.

14 THE COURT: That's reasonable. Okay. You want
15 the 2nd of November?

16 MR. OLDHAM: Please, Your Honor.

17 THE COURT: Do you have any idea how much that's
18 going to be?

19 MR. OLDHAM: I do not, Your Honor. There have
20 been --

21 THE COURT: Apparently, there's a war of words
22 going on out there.

23 MR. OLDHAM: Absolutely, Your Honor. And there's
24 a lot of people that aren't even involved in the war of
25 words. So it's going to be a lot, Your Honor.

1 THE COURT: Right. And we're all thinking about
2 the same thing. Unless it's got some sort of admission, it
3 probably is not relevant.

4 MR. OLDHAM: Absolutely, Your Honor. I agree
5 with that.

6 THE COURT: There's a bunch of hearsay stuff
7 floating out there with people saying all sorts of things one
8 way or the other.

9 MR. OLDHAM: Yes, Your Honor. But I think the
10 context is fairly important, and so I would rather turn over
11 everything we have.

12 THE COURT: Sure. And they can actually get the
13 same thing if they actually issue --

14 MR. OLDHAM: I believe so, Your Honor, or I think
15 they could probably just scroll back through and see all the
16 things.

17 THE COURT: Sure. It's available. Should be
18 available right now to anybody who wants to go look.

19 MR. OLDHAM: I think it's more available to
20 defense counsel than it would be for us.

21 THE COURT: Right. That's what I mean. Anybody
22 from the defense side who just wants to go look, they can go
23 look.

24 MR. OLDHAM: I believe so, Your Honor.

25 THE COURT: I think so too. We'll set a date for

1 the final submission by the government of any further
2 electronic information, which includes any type of -- well,
3 I'll just say electronic information, and that will be
4 November 2.

5 MR. OLDHAM: Yes, Your Honor.

6 THE COURT: Now, the defense, like I say, it
7 doesn't sound like it's going to be something that would be
8 the focus really of the case. The focus will be the earlier
9 material. So the date that the defense asked for was
10 November the 15th to file any motions. So we'll keep that.

11 Because this is a social media case and because
12 I'm not familiar with the risk in social media cases, are
13 there special precautions that need to be taken in the case
14 to eliminate inappropriate materials submitted through social
15 media by anybody? Do you see what I'm worried about?
16 Obviously, we're all aware of the case that's going on in New
17 York, and I don't know that there's a problem. But I point
18 that out because there might need to be something.

19 MR. OLDHAM: Your Honor, I believe --

20 THE COURT: All of you could enter a joint
21 protective order, and we could try to effect that. I don't
22 like doing it because it's an area I'm not familiar with so
23 much. It's got some First Amendment-related issues, but if
24 the parties agree, maybe there's something that should be
25 done. I just don't know.

1 MR. OLDHAM: Yes, Your Honor. I think that's a
2 topic that I haven't considered, but we'll speak with defense
3 counsel about that.

4 THE COURT: Okay. And it looks like,
5 Ms. Grayson, that there might need to be a conversation, as
6 you pointed out, on that. I don't know if there's anything
7 we can do, but we certainly don't want to raise -- we want to
8 raise it now and not later.

9 Okay. All right. Now, the case needs to be
10 reset. And the question is -- we've got it down for a
11 four-day trial. And there will be a final report date. But
12 maybe we need to figure out when we should reset it.

13 Because, Mr. Ballin, you've got to coordinate
14 with your co-counsel. When do you think?

15 MR. BALLIN: Your Honor, I spoke with Mr. Palmer
16 about trial dates thinking that Your Honor would want to go
17 ahead and set that.

18 THE COURT: Right.

19 MR. BALLIN: He, in my discussions with him,
20 appears to be a lawyer that tries a lot of cases.

21 THE COURT: It looks that way.

22 MR. BALLIN: He's given me some dates that he
23 doesn't have jury trials.

24 THE COURT: Okay.

25 MR. BALLIN: May I be so bold as to share with

1 the Court those dates?

2 THE COURT: Absolutely.

3 MR. BALLIN: January 29, February 12, March 4 or
4 March 25.

5 THE COURT: Mr. Scholl, your thoughts?

6 MR. SCHOLL: I'm looking at my schedule right
7 now. I think I'm good all of those weeks. I have a murder
8 trial set the week before, but I think I'm free pretty much
9 most of those weeks, Your Honor.

10 THE COURT: The government?

11 MR. OLDHAM: That 29th day, Your Honor, I know
12 that I'm free that date.

13 THE COURT: We have a case set.

14 MR. OLDHAM: Okay. I'm sorry, Judge. I went to
15 the first one because I thought --

16 THE COURT: No, no. That's fine.

17 MR. SCHOLL: I'm good on February 12 also, Your
18 Honor. Actually, I'm good on all of them, Your Honor.

19 THE COURT: Well, we've set something on February
20 the 12th because that is, as everybody knows -- does anybody
21 know the importance of February 12th here? Nobody is going
22 to bet on you guys. What's the importance of February
23 the 12th?

24 MR. BALLIN: It's just a date that Mr. Palmer
25 said that he was available.

1 THE COURT: That's not the reason it's important,
2 but that's a nice thought.

3 MR. BALLIN: Oh, I'm sorry.

4 THE COURT: It's Washington's birthday. Okay.

5 MR. OLDHAM: Not my parents' anniversary, Your
6 Honor? That's not the date that you were talking about,
7 Judge?

8 THE COURT: Is it their anniversary?

9 MR. OLDHAM: It is, Your Honor.

10 THE COURT: That's wonderful. I think that's
11 probably not going to work for us.

12 CASE MANAGER: We're set for Gomez that week.

13 THE COURT: We are set for Gomez.

14 CASE MANAGER: It's likely to go.

15 THE COURT: It's likely to go, yeah.

16 March the 4th? If we give you a date that far
17 out, it's very unlikely that it will change.

18 CASE MANAGER: That's good.

19 THE COURT: March 4. Trial March 4.

20 This is a likely trial, right, Mr. Ballin?

21 MR. BALLIN: Yes, sir. Although Mr. Oldham and I
22 and Mr. Palmer will continue to work toward a possible
23 resolution, but at this point, we're looking to try it.

24 THE COURT: Right. It just sounds like a case
25 that has to be tried. It may not be, but it sounds like one.

1 MR. BALLIN: Your Honor, while I'm on my feet.
2 Your Honor asked Mr. Oldham about the video, if it appears to
3 be disjointed or stopped at some point, and those were my
4 words.

5 THE COURT: I did.

6 MR. BALLIN: I think the issue is going to be on
7 the front end and the back end --

8 THE COURT: Okay.

9 MR. BALLIN: -- whether or not it's recorded from
10 the very beginning, and if the recording stopped before the
11 conversation --

12 THE COURT: Sure. So there's no issue about the
13 video -- the portion you have?

14 MR. BALLIN: The portion that we have appears to
15 be complete. I'm of the opinion the issue is going to be
16 before the recording started, the conversation had already
17 begun, and the conversation continued after the recording
18 stopped.

19 THE COURT: Okay. Well, everybody understands
20 what the issue is, and that's more of an evidentiary matter
21 for a jury to determine. So that's probably how that will
22 work out.

23 Okay. Now, we've got you down for trial on March
24 the 4th. I want to tell Mr. and Ms. Grayson, we always set a
25 final report date, and we always set a date for submission of

1 a plea agreement telling everybody that the Court doesn't
2 care if you plead or not. In fact, I often tell people, you
3 have a constitutional right to go to trial. And I don't have
4 anything to do with the other. I really don't. But we do it
5 because there needs to be some finality in terms of where we
6 are and any discussions with the government. I don't even
7 encourage discussions -- I probably wouldn't talk to the
8 government myself. I'm kidding about that. But my point is
9 that that is really between you, your counsel and the
10 government. Not the Court at all. But we respect the fact
11 that we've got to know if something is going to happen. And
12 that's the reason we set it.

13 So let's set a final report date. And we will
14 need Mr. Palmer here because we've got to see him and make
15 sure that everything is going to go correctly.

16 CASE MANAGER: Your Honor, we could set that
17 either -- for either Friday, February 9 at 10:45, or we could
18 set it for February the 16th at 9:30.

19 MR. SCHOLL: The 16th is good for me.

20 THE COURT: Okay. Is that a Friday?

21 CASE MANAGER: That's a Friday, Your Honor.

22 THE COURT: We probably ought to set it on a
23 Thursday.

24 MR. BALLIN: How about the 16th?

25 THE COURT: The 16th works better?

1 MR. BALLIN: Yes, sir, because he said he would
2 be available to try the case February 12. So that's my
3 suggestion is we go with the 16th of February.

4 THE COURT: Is that okay, Mr. Scholl?

5 MR. SCHOLL: That's fine with me, Judge.

6 THE COURT: Sure. Sure.

7 What about the government?

8 MR. OLDHAM: I'm available, Your Honor.

9 THE COURT: What time, 9:30?

10 CASE MANAGER: 9:30, Your Honor.

11 THE COURT: Okay. Now, if there is going to be a
12 plea, again, I have no interest in that at all; but I have to
13 give you a date, and that would be due by Valentine's Day,
14 the 14th.

15 MR. OLDHAM: Noon, Your Honor?

16 THE COURT: Noon. Yes.

17 Now, Mr. and Ms. Grayson, often it seems to
18 individuals that are in a criminal proceeding in state court
19 or federal court that the lawyers do all the talking, and
20 they do all the work and analysis. I'm sure that both of you
21 understand that's not the case at all. You know, you have
22 the obligation, which has already been reviewed in the
23 earlier order, to go through the materials yourself because
24 only you can assess these things and assess how you want to
25 proceed.

1 The lawyers can represent you, but they can't do
2 something that you don't want to do. In other words, they
3 have to coordinate with you and be your spokesperson here in
4 court, but nothing else. Really, it is your case. So I just
5 remind everybody, you've got those materials. If you haven't
6 gotten the package of discovery --

7 Ms. Grayson, do you have the package already?
8 You should.

9 DEFENDANT MS. GRAYSON: Yes, Your Honor.

10 THE COURT: Mr. Grayson?

11 DEFENDANT MR. GRAYSON: Yes, Your Honor.

12 THE COURT: Okay. Well, that's important. We
13 just encourage you to look at it carefully and, of course,
14 consult with counsel. The time will be excluded in order --
15 actually, it was requested by the defense through March
16 the 4th.

17 We're reflecting, Mr. Ballin, that that is to
18 allow for defense preparation; is that correct?

19 MR. BALLIN: That's correct, Your Honor.

20 THE COURT: And same thing, Mr. Scholl?

21 MR. SCHOLL: Yes, Your Honor, move for exclusion
22 of time for time to prepare.

23 THE COURT: Okay. No problem. I think we've
24 covered what we need to. I just want to emphasize that we
25 will try very, very hard to stay on our current schedule. We

1 understand the difficulty, stresses, et cetera, that it
2 causes individuals who are accused of a crime in a federal
3 court, and it's needs to get over. We just need to get it
4 done, whatever is going to happen. So we will try very, very
5 hard to stay with the schedule.

6 And anything else, Mr. Ballin, as to Mr. Palmer
7 that I need to know?

8 MR. BALLIN: No, Your Honor.

9 THE COURT: Okay. By the way, we've probably
10 checked it out. He's hopefully wrapping up closing
11 arguments, but we haven't heard it yet.

12 CASE MANAGER: Working on it, Your Honor.

13 THE COURT: We'll find out. So, hopefully, he is
14 wrapping up what he was doing there and can now concentrate
15 on this case.

16 I think that concludes everything.

17 Anything else from the government?

18 MR. OLDHAM: No, Your Honor.

19 THE COURT: Okay. I can set an absolute never
20 talk to me again about it deadline on any expert reports from
21 anybody. Maybe I should do that. What do you think?

22 MR. OLDHAM: Your Honor --

23 THE COURT: I mean, you're not contemplating one?

24 MR. OLDHAM: I am not, but the Court did raise a
25 concern that we are definitely going to look into. So a

1 deadline would be appreciated. Could we please have 30 days,
2 Your Honor?

3 THE COURT: Sure. That's very reasonable. Okay.
4 That puts you almost in the Thanksgiving period. So let me
5 give you -- well, not quite. Let me give you to November
6 the 30th. This is for everybody. Deadline for any party who
7 contemplates calling of an expert to disclose their expert
8 and their expert report by November 30.

9 Again, nobody has indicated they intend to do
10 this, but recently it's become clear that in cases like this,
11 we should set a deadline.

12 Any problem, Mr. Ballin?

13 MR. BALLIN: No, Your Honor.

14 THE COURT: And, Mr. Scholl, anything else?

15 MR. SCHOLL: No, Your Honor.

16 THE COURT: Good deal. I think that's it.

17 (Adjournment.)
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C E R T I F I C A T E

I, TINA DuBOSE GIBSON, do hereby certify that the foregoing 37 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the SCHEDULING/STATUS CONFERENCE hearing held on the 26th day of October, 2023, in the matter of:

UNITED STATES OF AMERICA

vs.

ASHLEY GRAYSON AND JOSHUA GRAYSON

Dated this 7th day of November, 2023.

s/Tina DuBose Gibson

TINA DuBOSE GIBSON, RPR, RCR
Official Court Reporter
United States District Court
Western District of Tennessee